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A
SUPPLEMENT

P.P. London
TO THE
LONDON Journal

Of March 25, 1721;

BEING

The State of the CASE

Relating to the

Surrender of Mr. KNIGHT,

Farther Considered.



L O N D O N :

Printed for J. Peele, at Locke's Head in Pater-
Noster Row. 1721.

(Price Six Pence.)

SUPPLEMENT

TO THE

LONDON JOURNAL

OF AMERICA

BRING

The State of the Case

to the





TO THE
AUTHOR
 OF THE
LONDON Journal.

S I R,



MR. *Knight* being still protected at *Antwerp*, notwithstanding the pressing Instances made by His Majesty for his Surrender ; I desire you will, as a *Supplement* to your Paper of the 25th of last
 A Month,

Month, give the following Argument to the Publick as soon as possible ; which I have just receiv'd in a Letter from a very great *Civilian* at *Brussels* ; and which I have faithfully translated, that the *English* Nation may see the Sentiments of a *Brabander*, upon the great Point in Question, between the High and Mighty States of *Brabant*, and our Abus'd and Unhappy Country.

I am, S I R,

April 21,
1721.

Your Constant Friend.



THE
State of the CASE

Relating to the
Surrender of Mr. KNIGHT,
Farther Considered.



Native of *Great Britain*,
and a Person in a pub-
lick Office, where he had
the Management of pub-
lick Money, being suspected of
Malversation, was personally and
juridically cited to appear before
competent Judges, to answer to
Interrogatories relating to certain
Facts laid to his Charge ; which
was comply'd with accordingly :
But

But he (fearing a Decree against him of bodily Imprisonment) takes his Measures to escape, and actually flies the Kingdom; carrying with him (as 'tis presumed) considerable Sums, as well in Money as Effects. And after having crossed the Sea, and *Flanders*, and *Brabant*, as far as to *Tirlemont*, (with an apparent Intention of leaving *Brabant*) he there is overtaken and seized by the Authority of the Government.

The Question is,

Whether any Potentate, Authority, or Judge, being thereto duly required, can, with Justice, refuse to surrender the Person so arrested, and hinder his transport out of Brabant; in order to be delivered to the Power so claiming and demanding him?

The Opinion is in the Negative.

In

In order to consider the Question thoroughly, we must in the first place examine, upon what Foundation such a Refusal can be supposed to be laid; and shew that none of them are of any Avail in the present Case.

This Refusal may be founded upon two Heads:

The *First*, is the Right of *Azy-lum* or Refuge simple and common.

The *Second*, is the particular Privileges of *Brabant*, granted to them by the 17th Article of the *Joyful Entry* *, which forbids the transporting

* Item, *Dat so wat Persoon binnen onsen Lande van Brabant ende van Over Maeze, ghevangen wort, dat wij dien niet en sullen doen voeren, noch laeten voeren ghevanghen buijten onsen voorsz. Lande.*

Translated verbatim.

Item. *That if any Person within our Territories of Brabant and Over Maeze, be made a Prisoner, that we shall not order such a Person, nor permit him to be carried Prisoner out of our foresaid Territories.*

sporting of a Prisoner out of the Province.

As to the Right of *Azylum* or Refuge, 'tis neither founded upon Divine Right, nor the Right of Nature, nor the Right of Nations, but purely positive. [*Ains purement positif.*] On the contrary: *Suum cuique tribuere, & crimina non relinquere impunita.* [to give to every Man his Due, and not to leave Crimes unpunished,] is agreeable to *all Right*. And in order to distinguish, whether the pretended Right of *Azylum* can take place, we must consider the Case either as Criminal or Civil.

It is most certain, that even in *Germany* (where by reason of the great Numbers of Princes and States, the Jealousy of their Privileges, in relation to the *Azylum*, or of giving Refuge and Protection [called *Freijhung*] is greater than

than any where else) the Person now arrested, would never have had the Privilege of *Azylum*: For there 'tis properly designed, *pro subditis & etiam forensibus in principis territorio delinquentibus*, [For Subjects, and also, for Strangers transgressing within the Territories of the Prince.]

For which, the decisive Reason in the Case of Foreigners is, That the Person committing the Fault or Delinquency within the Territory of the Prince, may be said to violate only the Jurisdiction of the Lord, and not of any other Prince; and therefore he against whom the Crime is committed, may remit the Crime: [tit. *Pro Forensibus*: *Quod delinquens in Principis territorio solummodo jurisdictionem Domini, (non verò alterius Principis) violare dicatur. Ideo hanc injuriam quoque remittere potest is in quem injuria commissa est. Quod variis ra-*

B

tionibus

tionibus confirmat Nicolaus ab Ehrenbach, Tract. de jure Azyli.]

And although that upon the Dispute, Whether a Prince of the Empire, setting up an *Azylum* or Right of Refuge in any City of his Dominions, can bestow upon it so great a Privilege, as that a *Foreigner* being a Delinquent, or committing his Crime out of the *Dominions* of the said Prince [which is the present Case] can enjoy so far an Immunity, that this *Azylum* or Right of Refuge can be of Force and Extension to all the Criminals in the Empire? I say, although the Affirmative of the Case thus stated may be probable, grounded principally upon this, Because the Avocations and Remissions of Delinquents do now depend upon the Will and Pleasure of the Prince of the Territory, whether he will send back the De-
 • linquent

linquent at the Instance of the Requirer or not? Yet all Authors agree, That these sort of *Azylums* (so commended in *Deuteronomy* and *Joshua*) are only so far praise-worthy, and ought of right to subsist, whilst they afford Protection (not to voluntary Delinquents, nor to deceitful ones) but to imprudent Persons: *Hæc Azyla tantum Laudem mereri, & de Jure subsistere, quando patrocinantur non voluntariis nec dolosis* [Den Muthwilligen und vorsetzlichen] *sed imprudentibus.*

Now that the Malversations which a Person commits in his Office, and in the Money depending thereon, are *voluntary* and *deceitful* Crimes, is as clear as possible, and is further confirmed by the Flight of the Delinquent out of *Great Britain*; which excludes him from the Right of *Azylum* in all Nations; more especially he having

been personally cited, and having answered to Interrogatories, (which is a Commencement of a criminal Procedure) the Delinquent being fixed and limited to a certain Town, Province, or Kingdom for his Prison ; in which Case (were there no other) the Right of Refuge in a Foreign Country is very disputable ; I say, upon this very Head.

And without entering into the Discussion of this Question, 'tis not to be believed, that the Sovereign will ever grant a Protection or *Azylum* in his Territories to a Delinquent *who was but a Passenger thorough them*, and was already upon the utmost Limits of them, in order to save himself in some other Country.

Besides, it is to be observed, That the *German* Authors, treating of this Matter, spake, *de forensibus*,
sed

fed sub Imperio ; [of Foreigners, but such as are under the Jurisdiction] and not of absolute Strangers : Forasmuch as 'tis commonly received among all Potentates of the Earth, who are not in actual War, (and in particular, by the Great Allies) that Princes take not the Subjects or Vassals of each other into their Protection, without their Prince's particular Consent, let the Case be either Criminal or Civil (as *Bodin*, in his Treatise, *de Republicâ*, very well observes ;) unless the Person so protected were *banished* by his Prince. This agrees with *Solon's* Law, which forbids, that any Foreigner should have the Right of Burgesship in *Athens*, who was not *banished* from his own Country ; and without giving these Instances, we may generally say, in the Terms of the Law, That the Right of Burgesship is
not

not lost, nor the Power of the natural Prince over his Subject taken away, by reason of his changing his Place or Country.

'Tis very true, that often Princes do draw, and entice Strangers to them, either upon the Score of Religion, or to people their Country, or in order to weaken the Power of their Neighbours, or to gain excellent Artificers, and Persons of superior Abilities, or upon other Views. But, on the other hand, we likewise see that all Princes do what is in their Power to hinder this Practice, by forbidding their Subjects to quit their Dominions without Leave: Thus 'tis in *Britain, Denmark, Sweden, Naples*, and elsewhere; the Nobility of which cannot absent themselves without Permission.

And altho' the *Low Countries* (especially *Brabant*) be a very free Country,

Country, where, according to the Ordinances of the Year 1312, Strangers might come and establish their Households, and these might afterwards remove themselves whither they pleased : Yet the several Placards of the 18th of September, 1567 ; the 1st of July, 1609 ; the 15th of November, 1627, with the Notes of *Zipens de notitiâ Juris Belgici*, according to the Customs of *Flanders*, by him cited, shew that this Liberty is very much limited in several Particulars ; and even in our Days we see the Fiscals exert themselves, when the Case touches the Conservation of the Good of the State, in whatsoever Province, City, or Fraternities of Trade (wherein the Diminution, or Disadvantage of the Publick, may be concerned) it may happen. And therefore (over and above the several Treaties) Princes

Princes make By-Laws and Ordinances for the Conservation of the State, which ought certainly to be reckon'd among the Fundamental Laws, tho they may not perhaps be called by that Name. And we may conclude with *Bodinus*, that Princes are accustomed among themselves for this Reason, to put in force *Rogatory Commissions*, or Letters of *Marque*, to make their Subjects obey, and to evoke or reclaim the Causes and Pursuits against them, (except in Cases of Right determined;) and upon this Point we often see War declared between the Princes requiring and refusing.

Now as to the Second Head, founded upon the particular Privileges of *Brabant*, this ought not to come under Consideration till the Person arrested has declared,

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by some Remonstrance, that he insists upon it, and pretends to make his use of it. For whosoever builds upon a Privilege, ought to allege and prove it first. Notwithstanding, whilst we are in the Dark, whether such Remonstrance was ever made or not, we may venture to say, that this Privilege can no way operate in the present Case. All that the Person arrested can allege must be, that the Text of the *Joyful Entry*, in the 17th Article, wherein it is said, *Soo wat Persoon ; Whatsoever Person, &c.* comprehends in general, and without Distinction, Restriction, or Modification (in respect to the Person arrested) all sorts of People, whether of *Brabant*, or of all the *Low Countries*, or any other way a Subject of the Prince, or an utter Stranger ; and that this Privilege is real, and attached and annexed

nexed to the Land of *Brabant*. But if any one wou'd penetrate into the true Sense of this, they wou'd find that the Meaning of it must be, that when a *Brabander* is made a Prisoner in *Brabant*, the Duke shall neither cause, nor suffer him to be convey'd a Prisoner out of the Land of *Brabant*. The Word *Soo wat Persoon*, finds its Signification in the Person of a Subject of *Brabant*, of whatsoever Condition or Sex it may be, whether Man or Woman, Ecclesiastick or Secular, Noble or Ignoble. The Word *Gevangen*, or Prisoner, signifies properly a *Criminal* Prisoner; and the meaning is, that a *Brabander* being *there* made Prisoner, shall be absolutely and finally judged by *Judges* of *Brabant*, and according to the *Laws* of *Brabant* [*as in England, all Persons are to be tried by the Vicinage.*] This Law, in its
self

self is good and just, and this corresponds with many other of the Articles in the same *Joyful Entry*, which speak of Judges, and the Execution of Justice ; but if we should stretch the Interpretation of it to Strangers indifferently, it wou'd become very unjust.

All Privileges are to be regularly taken upon the Foot of Remuneration ; and shou'd this Article be construed so generally, as to extend to Strangers, it wou'd follow, that all Nations in the World had merited from the *Brabanders* and their Duke.

In the Duke of *Alva's* Time, this Matter was pushed very far in favour of the *Belgian* Provinces in general (they being all then united under the same Sovereign) but never in favour of absolute Strangers. And altho' we shou'd suppose that *Great Britain* had merit-

ed very much at the *Brabanders* Hands, wou'd it therefore follow, or be thought Justice, that a Privilege ought to be allowed in favour of a *particular Subject* of *Great Britain*, to the Disadvantage of that King, the Kingdom, or the States of it? Ought this Merit to be recompenced the quite contrary way?

In fine, let us take this Privilege in the most general and comprehensive Sense; and for as strong and fundamental a Law as some wou'd have it: I am going to prove, that it can have have no manner of Operation in the present Case.

By the 24th Article of the *Joyful Entry* 'tis stipulated, That the Duke *shall not suffer his Subjects* of *Brabant* to *arrest or implead each other out of the Jurisdiction* of *Brabant*: And you may note, by the way, that

that this Law binds and obliges a Subject of *Brabant*, tho' he be out of the Prince's Territory ; and this shews you, that as well in *Brabant* as elsewhere, what we averr'd before is true, viz. that the Power of the Prince over his Subject is not lost or diminished by the changing his Place of Abode or Country ; and most certainly can never be supposed otherwise, *quando mutatio est momentanea*, when this Change is of a sudden, and but for a short time : And every Man will readily believe, that if this case shou'd happen in *Great Britain*, the King wou'd give a speedy Redress upon the first Requisition and Instance of the Duke of *Brabant*. These two Privileges, contained in the 17th and 24th Articles (whereof the Second, taken generally, is more strong than the First) ought, with great reason,

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to lie under the same Restrictions and Modifications. The Second is actually modified in Terms by the said 24th Article, wherein these Words follow immediately those before quoted, *unless the Person to be arrested be a Fugitive*; if then, a *Brabander* may lawfully arrest his Debtor *Brabander* out of that Country, in case he be a *Fugitive*, it is much more equitable to grant the same Privilege in *Brabant* to Strangers.

But further, whoever peruses the Treaties between *England* and the Sovereign of *Brabant*, will find by them, that the Obligations between these two Nations are much stronger than between *Brabant* and any other Foreign Country. The Treaty of 1495, confirmed by several subsequent Treaties, viz. those of 1604, 1630, and 1660, contains this Clause, as translated
out

out of the *Latin*, Chap. 27, That
 any Subject of either of the two Princes,
 alledging, That his Debitor is justly
 suspected to be a Fugitive, the said
 Debitor ought to be put and held un-
 der Arrest, unless he proves, that he
 ought not to be suspected of being such
 Fugitive. But here the Question is
 not between particular Subjects of
 the different Potentates, whereof
 the one is barely suspected of Flight;
 but wherein a King, a Kingdom,
 a whole Nation is concerned, pur-
 suing a Subject, truly a Fugitive, by
 such plain Proofs as admit of no
 Contradiction : A Subject in a
 publick Office, entrusted with the
 Management and Disposal of vast
 Sums of Money, whereon depends
 the publick Credit of the whole
 Nation : A Person who ought to be
 sent back to be judged according
 to the Laws of his own Country ;
 it being a Thing impossible, that
 those

those Laws should be thoroughly understood by any Judges of a strange Country.

And who can imagine, that the Sovereign of *Brabant* should refuse to send him home, considering, that by the Stipulations in the Treaties, the two Princes have obliged themselves reciprocally to procure and promote, *in all Things*, whatsoever shall be to the Advantage of each of them and of his Nation; and also, to hinder every thing that may be any ways hurtful? And as to the States of *Brabant*, how should they dare to oppose the Surrender and Return of such a Criminal? Surely, they would not be willing that the like should happen in their own Case, if one of the Receivers of publick Money should run away and take shelter in *Great Britain*. There is a Rule which is very good and natural,

hly natural, which dictates, *Quod tibi*
 a non nocet, *Alteri Prodest, facile est con-*
 cedendum! *maxime dum non solum non*
 the prodesset, *sed multum noceret si non fi-*
 ruse eret. Whatever does you no harm, and
 ng, does Another Person good, ought to be
 the easily granted; but especially, when it
 ob- would do no good, but might do a great
 to deal of harm if it were not done. Now
 ngs, No body can see what Harm or
 an- Wrong it would do the *Brabanders*,
 his if the Person arrested were sent
 ery over; or to their Privilege, where-
 ert- of the Sense and Meaning has been
 Bra- declared dubious by the Act of
 op- the Magistrate of *Brussels*, made
 of the 6th Day of *October*, 1692, and
 hey sign'd, *H. Jacobs*, at the Instance
 like of the Scout of *Amsterdam* against
 ase, *Peter Baltazar Lievens*, a Bankrupt
 lick of *Amsterdam*, detained a Prisoner
 ake in the *Vrunt*, (a Prison so called
 e is at that Time) the Words of that
 and Act are, *That whereas the Prisoner*
 ral, D pleaded,

pleaded, that the Privileges of Brabant ought to operate in his Favour, altho' he was neither a Brabander nor a Subject of his Majesty ; under the Pretext, that the Article was couched in general Terms ; therefore, in order to avoid any Infraction, it was resolved, to leave the Sense and Interpretation of it to the Council of Brabant : Which at last was finally determined and put beyond all doubt by the Decree of the Governour General, with the Advice and Consent of the said Council and of the Estates. By Virtue of which, the Prisoner was surrendered, and put into the Possession of the Resident of the States-General of the United Provinces.

There were these further Differences and Singularities between this and the present Case ; That the said *Lievens* was a Roman Catholic ; and alledged, that he retired into *Brabant* in order to have the
freer

freer Exercise of his Religion. That he came into *Brabant*, with a Design to fix his *Houſhold* and *Family* there; that he had already for a long time dwelt there. That the Jurisdiction of the Judge over him in *Holland*, was not yet thoroughly founded by any Act of *Summons*, or otherwise.

In the present Case it is therefore most certain, that the Requiſitories, or Instances of his Majesty of *Great Britain's* Ministers ought to take place, notwithstanding all Privileges of this Nature; which, according to the Opinion of the before-cited *Ziſpeus*, (in his Introduction) might even be abrogated. His Words are as follows ----- *Sed & hæc ipsa (privilegia) frequentem patiuntur abrogationem, si quod in utilitatem publicæ considerationis concessum est incipiat vergere in nimium damnum,*

vel etiam modum excedat: Et etiam possunt ipsi ordines privilegia concessa remittere, dummodo causa aliqua subfit; imo potest princeps Leges publicas & promissas non tenere si irrationibiles sint vel deveniant, & aliud salus publica exigat. ---- But these very Privileges do frequently bear an Abrogation, if what was at first granted for the Sake of the publick Utility, should begin to turn to its great Damage, or should exceed a just Measure; and the very States themselves can, upon Occasion, remit the Privileges granted to them: Nay, the Prince may suspend the publick Laws and his Promises, if they be or become unreasonable, and the Publick Safety require it.

And 'tis believed, for this very reason, at the Time of the Joyful Entry of Philip the Second [Charles the 5th of immortal Memory, being then present and assisting, in the Year 1549] after several
Con-

Conferences and Debates held between the *Prince* and the *States* (by Commissaries, who thoroughly understood the Authority and Superiority of the Prince, as well as the Original Rights and Privileges of the Country) upon occasion of changing or moderating the Articles, according as they should be *observable*, or *non-observable*, in respect to the Promise made by the Prince, to observe them in the last Article but one that this Clause was added, ----- *so far as the said Articles are to be observed, or are observable*; which Clause has ever since been inserted in all the subsequent *Joyful Entries*. And we think 'tis sufficiently demonstrated, that the Privilege in Question is among the Number of the *Non-observables* with Regard to *Foreigners*. And namely, in the Case of a Subject of *Great Britain*; who

who, besides all the foregoing Reasons, was *in procinctu*, just ready to run out of *Brabant* itself, and has thereby rendered himself unworthy of any Privileges belonging to a *Brabander*.

F I N I S.



This Day is publish'd, the second Edition of,

I. **T**HE Sense of the People concerning the present State of Affairs ; with Remarks upon some Passages of our own and the *Roman* History. In a Letter to a Member of Parliament. The chief Design of the Author, in this Pamphlet, was to shew, that it was the old Parliamentary Way, upon any great and crying Grievance, to appoint a Day for going into a Committee of the whole House, *to consider of the State of the Nation.* Vid. p. 14, 20, &c. and p. 21, he has these Words : *The very Talk of such an Enquiry has made a Ministry sometimes very wisely produce an Offender — or redress some Grievance chiefly complain'd of, lest by not preventing such an Enquiry, they might run the Risque of being oblig'd to redress more Grievances, than perhaps at first were thought of.* How far this Method has, or will be taken, he is no Judge ; but the Occasion of this is, that he had accidentally heard it said, in a Place he was at, that the only Design of this Paper, was *to give the Cases of Gaveston and the Spencers, which every Body knew already.* Price Six Pence.

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And

And on Saturday will be publish'd,

III. A Letter to a Leading Great Man,
concerning the Rights of the People to Peti-
tion ; and the Reasonableness of complying
with such Petitions.

— *Take Care, nor slight the vulgar Breath,
Which oft, by Justice back'd, brings sudden Death.
The common Cry hunts down the Hill of Fate,
Stop short, or counter-run, e'er 'tis too late.
Remember Gaveston, on Spencer think ;
The Cup is full, and Somebody must drink :
Justice and Vengeance is the common Cry ;
Guilt makes it terrible to live or die.
To palliate Roguery, never more be seen,
They're doubly guilty, who the Guilty SCREEN.*

All sold by J. Peele, at Locke's Head in Pater-
Noster Row.



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